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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,840	04/23/2001	Gary Alan Culliss		2049
7590	11/10/2003			EXAMINER
Patent Administrator Testa Hurwitz & Thibeault LLP High Street Tower 125 High Street Boston, MA 02110			HOOSAIN, ALLAN	
			ART UNIT	PAPER NUMBER
			2645	16
DATE MAILED: 11/10/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

S:1

Office Action Summary	Application No.	Applicant(s)
	09/839,840	CULLIS, GARY ALLAN
	Examiner	Art Unit
	Allan Hoosain	2645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on Amendment B, 9/22/03.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3-13,15 and 17-20 is/are rejected.
- 7) Claim(s) 14 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____ .
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FINAL DETAILED ACTION

Allowable Subject Matter

1. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3-8, 10-13, 15 and 17-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by **Kelly, Jr.** (US 4,941,168).

As to Claims 1,15, with respect to Figures 6-9, **Kelly** teaches an answering machine detection method for a voice message delivery system comprising the steps of:

- (a) placing an outbound call to a recipient (Figure 6, label 104);
- (b) detecting a telephone line pick-up (Figure 6, label 108);
- (c) playing a prompt (Figure 7, label 206);

(d) determining, at a voice message server, that the telephone line pick-up was by an existing answering machine if there is talk-over during the playing of the prompt (Col. 6, lines 36-40).

As to Claims 3,17, **Brown** teaches the answering machine detection method of Claim 1, further comprising the steps of:

- (e) waiting for silence if the telephone line pick-up was by the existing answering machine (Figure 9, label 206);
- (f) playing a message if the telephone line pick-up was by the existing answering machine (Figure 7, label 210); and
- (g) playing a message if the telephone line pick-up was by a live Recipient (Figure 9, label 210).

As to Claims 4,18, **Kelly** teaches the answering machine detection method of Claim 3, further comprising the steps of:

- (h) detecting talk-over during playing of the message if the telephone line pick-up was by the existing answering machine (Figure 7, label 210), and
- (i) restarting the playing of the message if the telephone line pick-up was by the existing answering machine and talk-over is detected during playing of the message (Figure 7, label 224).

As to Claims 5,19, **Kelly** teaches the answering machine detection method of Claim 3, wherein step (f) comprises:

playing a first message if the telephone line pick-up was by the existing answering machine (Figure 6, label 122); and further wherein step (g) comprises:

playing a second message different from the first message if the telephone line pick-up was by the live recipient (Figure 6, label 120);

As to Claims 6,20, **Kelly** teaches the answering machine detection method of Claim 3, wherein step (g) comprises:

playing a message and playing at least one interactive option if the telephone line pick-up was by the live Recipient (Figure 9).

As to Claim 7, **Kelly** teaches the answering machine detection method of Claim 3, wherein step (g) comprises:

playing at least one interactive reject option, playing a message, and playing at least one interactive option if the telephone line pick-up was by the live recipient (Figure 9).

As to Claim 8, **Kelly** teaches the answering machine detection method for a voice message delivery system comprising the steps of:

- (a) placing an outbound call to a Recipient (Figure 6, label 104);
- (d) detecting a telephone line pick-up (Figure 6, label 108);

- (c) playing, by a voice message server, a first voice message to the Recipient (Col. 3, lines 46-51 and Figure 7, label 210);
- (d) playing, by the voice message server, a second voice message, different from the first voice message, that requests a touch-tone input from the Recipient (Col. 3, lines 58-64); and
- (e) determining the telephone line pick-up was by a live Recipient if the requested touch-tone is received at the voice message server (Figures 7 and 9).

As to Claims 10-12, **Kelly, Jr.** teaches the answering machine detection method of Claim 1, wherein step (c) comprises:

playing the prompt within one second of detecting the telephone line pick-up (Col. 6, lines 58-68).

As to Claim 13, **Kelly** teaches the answering machine detection method of Claim 1, wherein step (c) comprises:

playing a prompt that introduces the outbound call to a live recipient (Figure 6, label 120).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Kelly** in view of **Cox et al.** (US 6,396,920).

As to Claim 9, **Kelly** teaches the answering machine detection method for a voice message delivery system comprising the steps of:

(a) placing an outbound call to a Recipient;
(d) detecting a telephone line pick-up;
(c) requesting, by a voice message server, an input from the Recipient; and
(d) determining the telephone line pick-up was by a live Recipient if the requested input is received at the voice message server (Figures 7 and 9);

Kelly does not teach the following limitation:

“a specific speech input”

However, it is obvious that **Kelly** can be modified to accommodate the limitation. This is because **Kelly** teaches specific dial tone inputs and detecting speech (Figure 7, label 224 and Col. 7, lines 29-33). **Cox** teaches detecting specific DTMF or speech inputs (Col. 19, lines 45-46). Having the cited art at the time the invention was made, it would have been obvious to one of ordinary skill in the art to add specific speech input capability to **Kelly**’s invention for offering option inputs as taught by **Cox**’s invention in order to provide message delivery services.

Response to Arguments

6. Applicant's arguments with respect to claims 1, 3-15, 17-20 have been considered but are moot in view of the new ground(s) of rejection and the following:

(a) **Kelly, Jr.** does not teach talk-over.

Examiner respectfully disagrees. **Kelly, Jr.** teaches detecting recordings whilst playing prompts. This detection is talk-over as disclosed in the disclosure at Page 13, lines 11-16.

(b) **Kelly, Jr.** does not teach a different message.

Examiner respectfully disagrees. This is because **Kelly, Jr.** teaches additional messages are used for interaction with a called party upon determining that the called party is a live person (Col. 3, lines 55-64).

(c) Examiner respectfully invites Applicant to contact Examiner to discuss possible amendments for overcoming the prior art of record.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Goldberg et al. (US 6,226,360) teach a system which delivers messages to recipients or answering machines.

Hanson (US 6,269,151) teaches message delivery and monitors for speech energy and silence at the destination.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any response to this final action should be mailed to:

Box AF

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9314, (for formal communications; please mark "EXPEDITED PROCEDURE")

Or:

(703) 306-0377 (for customer service assistance)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Allan Hoosain** whose telephone number is (703) 305-4012. The examiner can normally be reached on Monday to Friday from 7 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Fan Tsang**, can be reached on (703) 305-4895.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Allan Hoosain

Allan Hoosain
Primary Examiner
10/30/03